1 BRAD D. BRIAN (CA Bar No. 079001, pro hac vice) Brad.Brian@mto.com 2010 APR = 8 PM 4: 46 2 LUIS LI (CA Bar No. 156081, pro hac vice) Luis.Li@mto.com TRUC T. DO (CA Bar No. 191845, pro hac vice) 3 Truc.Do@mto.com MUNGER, TOLLES & OLSON LLP 4 355 South Grand Avenue, Thirty-Fifth Floor Los Angeles, CA 90071-1560 5 Telephone: (213) 683-9100 6 THOMAS K. KELLY (AZ Bar No. 012025) 7 tskelly@kellydefense.com 425 E. Gurley 8 Prescott, Arizona 86301 (928) 445-5484 Telephone: 9 Attorneys for Defendant JAMES ARTHUR RAY 10 SUPERIOR COURT OF STATE OF ARIZONA 11 COUNTY OF YAVAPAI 12 STATE OF ARIZONA, CASE NO. VCR1300CR201080049 13 Plaintiff. **DECLARATION OF THOMAS K.** 14 VS. KELLY IN SUPPORT OF DEFENDANT JAMES ARTHUR RAY, JAMES ARTHUR RAY'S OPPOSITION 15 TO MOTION TO QUASH SUBPOENAS Defendant. 16 **DUCES TECUM** 17 18 19 20 21 22 23 24 25 26 27 28

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DECLARATION OF THOMAS K. KELLY

I, Thomas K. Kelly, hereby declare:

- 1. I am an attorney and have been duly admitted to practice in the State of Arizona since 1988. I am a Certified Specialist in Criminal law and have been practicing criminal defense in Yavapai County for twenty years. I am local counsel for Defendant James Arthur Ray. I make this declaration in support of Mr. Ray's opposition to the State's motion to quash subpoenas *duces tecum*.
- 2. In the twenty years I have practiced criminal defense in Yavapai County, I have obtained documentary evidence on behalf of a criminal defendant by preparing subpoenas *duces tecum* for issuance by the Court. As long as the subpoenas are not directed at persons under the direction or control of the prosecutor (for example, police officers or crime labs), the subpoenas may be issued without notice to the State and specify that responsive documents be produced to defense counsel.
- 3. Based on my experience and practice, paramedics, hospitals, fire departments and coroners are not considered persons under the direction or control of the prosecutor. It has been my experience that the Yavapai County Attorney believes it does not have an obligation to actively seek out information from such agencies for the purpose of aiding the defense in its preparation for trial. As a result, I have caused subpoenas *duces tecum* to be issued on behalf of my clients in order to obtain relevant and potentially exculpatory evidence, without objection or comment by the Yavapai County Attorney's Office. Once the documents are received, copies are provided to the prosecutor as required by Arizona Rule of Criminal Procedure 15.
- 4. On March 16, 2010, my office submitted ten (10) subpoenas *duces tecum* for the following third parties to be issued by the Court:
 - Fire Departments Cottonwood Fire District, Sedona Fire District and Verde Valley Fire Department.
 - Patient Transportation Services Guardian Air Helicopter and Verde Valley
 Ambulance Company.
 - Hospitals Verde Valley Medical Center, Sedona Medical Center, and

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Flagstaff Medical Center.

 Coroners — Yavapai County Medical Examiner's Office and Coconino County Medical Examiner's Office.

See Exhibit A to the Declaration of Truc T.Do filed concurrently herewith. My office served the subpoenas on these third parties on March 18 and March 19, 2010.

- 5. On March 23, 2010, Sedona Fire District and Verde Valley Fire District complied with the subpoenas *duces tecum* and produced responsive documents. In light of the Court's temporary stay of compliance pending a ruling on the State's motion to quash, the defense will file these documents under seal with the Court.
- 6. On March 22, 2010, Verde Valley Medical Center informed my office that it will comply by sending responsive documents to the Court. On March 25, 2010, however, the custodian of record told my office she could not comply because she had received a copy of the motion to quash from the State.
- 7. Cottonwood Fire Department indicated it had no records to produce. Sedona Medical Center indicated they did not have a custodian of records and that requests should be directed to the individual doctors. Flagstaff Medical Center requested additional information to comply with HIPPA. Finally, my office received no response from Coconino County Medical Examiner's Office, Yavapai County Medical Examiner's Office, Guardian Helicopter or Verde Valley Ambulance.
- 8. On March 15, 2010, I received a Second Supplemental Disclosure from the State. Without reviewing the content, my office forwarded the disclosure to Truc T. Do at the law firm of Munger, Tolles & Olson LLP.

I declare, upon information and belief, that foregoing is true and correct and that this Declaration was executed this 8th day of April 2010 at Prescott, Arizona.

Thomas K. Kelly

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